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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,224	08/15/2005	Hiroshi Nagai	1083-7	6249
7590 Jack Schwartz & Associates Suite 1510 1350 Broadway New York, NY 10018			EXAMINER HELM, CARALYNNE E	
			ART UNIT	PAPER NUMBER
			1615	
			MAIL DATE	DELIVERY MODE
			09/18/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 10/528,224	<b>Applicant(s)</b> NAGAI ET AL.
<b>Examiner</b> CARALYNNE HELM	<b>Art Unit</b> 1615

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 04 September 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1, 3-6, and 9-10.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive.

Regarding rejection over Yamamoto et al. in view of Shokuhim Kenyu Seika Jyohou (SKSJ): Applicant argues that the combined references only teach a tea extract. When Yamamoto et al. teach leaves are combined with a solvent for extraction and the extraction has occurred, prior to the separation of the extract, the preparation is an extract and tea leaves. Since it would have been obvious to grind the tea leaves to facilitate a faster extraction via the larger surface area, Yamamoto et al. in view of SKSJ make obvious a preparation with tea extract and ground tea leaves. While Yamamoto et al. teach further products being produced from just the tea extract, this does not negate their teaching of a preparation with tea extract and tea leaves together. SKSJ provide evidentiary teachings regarding the quantity of EGCG3"Me in the leaves taught by Yamamoto et al. Tea leaves combined with water as a solvent can be considered food/drink. Therefore when the extraction solvent of Yamamoto et al. is water, the preparation prior to the separation of the extract would contain whatever quantity of EGCG3"Me the leaves contained. SKSJ does not teach that the EGCG3"Me is lost from the leaves prior to extraction, therefore absent evidence to the contrary, these leaves would contribute their total amount of EGCG3"Me taught present by SKSJ to the leaf/solvent preparation. SKSJ does not teach away from Yamamoto et al., but instead provides detail regarding the variety of tea leaves already taught by Yamamoto et al.

Regarding rejection over SKSJ in view of Piper and Steinberg: Each reference cited in a rejection made under 35 USC 103(a) is not required to separately teach every claimed limitation. Piper et al. teach ground tea leaves mixed with water in a drink, Steinberg teaches the proportion of tea to water commonly used to make a tea drink, and SKSJ teach a particular variety of tea leaves and the amount of EGCG3"Me that the leaves carry. Taken together, these teachings render obvious the claimed invention since it would be obvious to use commonly known methods of preparing tea drinks to make tea drink from the leaves taught by SKSJ. Furthermore, it is not clear why, as applicant asserts, it would be incorrect to substitute the amount of EGCG3"Me contained in the leaves for the amount of EGCG3"Me these same tea leaves contribute when combined with water in a tea drink. Applicant has provided no evidence that contradicts or disputes the calculations performed by the examiner in this regard.

Regarding rejection over SKSJ in view of Piper, Steinberg, and Marquardt: Applicant merely asserts that the tea bag taught by the combined references is fundamentally different than that claimed. This is not the case since SKSJ in view of Piper and Steinberg teach the tea leaves and extract as claimed in tea drink and Marquardt teaches a bag designed to carry beverages. Together the references render obvious the invention as claimed, since it would have been obvious to put any tea beverage into the container of Marquardt.

Regarding rejection over VirtualCoffee in view of SKSJ and Steinberg: VirtualCoffee teaches the preparation of tea drink by combining tea leaves with hot water, yielding an extract with tea leaves. Grinding of the tea leaves due to their brittleness or to yield a faster extraction would have been obvious. Applicant argues a particular particle size is not taught by the reference, but the leaf particle size is not a claimed feature of the invention. SKSJ teaches a known variety of tea leaves as well as the content of EGCG3"Me the leaves were known to carry and Steinberg provides the proportion of water to tea leaves known in preparing tea drink. Taken together these references render obvious the invention as claimed. The office action did not state that the VirtualCoffee reference was only concerned with tea leaves, as

applicant argues, and it does not teach away from an extract as part of their mixture since the extract constitutes the majority of the preparation this reference explicitly teaches.

Regarding rejection over VirtualCoffee in view of SKSJ, Stenberg, and Marquardt: As discussed above, VirtualCoffee in view of SKSJ and Steinberg makes obvious the claimed drink containing EGCG3"Me from tea extract and ground tea leaves. Marquardt teaches a bag designed to carry beverages. Together the references render obvious the invention as claimed, since it would have been obvious to put any tea beverage into the container of Marquardt.

/Caralynne Helm/  
Examiner, Art Unit 1615

/MP WOODWARD/  
Supervisory Patent Examiner, Art Unit 1615